

***OPTION A:***

***Amend regulations 18704.2  
and 18705.2 (Steps 4 and 5)***

***or***

***Add regulation 18706.1 (Step 6)***

**ENCLOSURE 1:**

**Regulations 18704.2, 18705.2 and 18706.1**

1                                    **STEP 4 – DIRECT/INDIRECT INVOLVEMENT**

2  
3       **Amend**

4       **18704.2. Determining Whether Directly or Indirectly Involved in a Governmental**  
5       **Decision: Interest in Real Property.**

6  
7                (a)       Real property in which a public official has an economic interest is  
8       directly involved in a governmental decision if any of the following apply:

9                (1)       The real property in which the official has an interest, or any part of that  
10       real property, is located within 500 feet of the boundaries (or the proposed boundaries) of  
11       the property which is the subject of the governmental decision. For purposes of  
12       subdivision (a)(5), real property is located "within 500 feet of the boundaries (or  
13       proposed boundaries) of the real property which is the subject of the governmental  
14       decision" if any part of the real property is within 500 feet of the boundaries (or proposed  
15       boundaries) of the redevelopment project area.

16               (2) The governmental decision involves the zoning or rezoning, annexation or  
17       deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county,  
18       district or other local governmental subdivision, of the real property in which the official  
19       has an interest or a similar decision affecting the real property. For purposes of this  
20       subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or  
21       changing the zoning or land use designation on the real property in which the official has  
22       an interest.

23               (3) The governmental decision involves the issuance, denial or revocation of a  
24       license, permit or other land use entitlement authorizing a specific use or uses of the real  
25       property in which the official has an interest.

1 (4) The governmental decision involves the imposition, repeal or modification of  
2 any taxes or fees assessed or imposed on the real property in which the official has an  
3 interest.

4 (5) The governmental decision is to designate the survey area, to select the project  
5 area, to adopt the preliminary plan, to form a project area committee, to certify the  
6 environmental document, to adopt the redevelopment plan, to add territory to the  
7 redevelopment area, or to rescind or amend any of the above decisions; and real property  
8 in which the official has an interest, or any part of it is located within the boundaries (or  
9 the proposed boundaries) of the redevelopment area.

10 (6) The decision involves construction of, or improvements to, streets, water,  
11 sewer, storm drainage or similar facilities, and the real property in which the official has  
12 an interest will receive new or improved services.

13 (b) Notwithstanding subdivision (a) above, real property in which a public  
14 official has an interest is not directly involved in a governmental decision, but is  
15 indirectly involved if:

16 (1) The decision solely concerns the amendment of an existing zoning ordinance  
17 or other land use regulation (such as changes in the uses permitted, or development  
18 standards applicable, within a particular zoning category) which is applicable to all other  
19 properties designated in that category, which shall be analyzed under Title 2, California  
20 Code of Regulations, section 18705.2(b).

21 (2) The decision solely concerns repairs, replacement, or maintenance of existing  
22 streets, water, sewer, storm drainage or similar facilities.

1           {**Dec 1**} (3) The decision is to adopt or amend a general plan but only identifies  
2 planning objectives or is otherwise exclusively one of policy and does not concern an  
3 identifiable parcel or development project, or the agency's prior, concurrent or  
4 subsequent approval of a specific plan.

5           (c) Determining the applicable materiality standard.

6           (1) If the real property in which the public official has an economic interest is  
7 directly involved in a governmental decision, apply the materiality standards in Title 2,  
8 California Code of Regulations, section 18705.2(a).

9           (2) If a real property interest is not directly involved in a governmental decision,  
10 apply the materiality standards in Title 2, California Code of Regulations, section  
11 18705.2(b).

1 **STEP 5 – MATERIALITY STANDARD**

2 **Amend**

3 **18705.2. Materiality Standard: Economic Interests in Real Property.**

4  
5 (a) Directly involved real property.

6 (1) Real property, other than leaseholds. The financial effect of a governmental  
7 decision on the real property is presumed to be material. This presumption may be  
8 rebutted by proof that it is not reasonably foreseeable that the governmental decision will  
9 have any financial effect on the real property.

10 (2) Real property, leaseholds. The financial effect of a governmental decision on the  
11 real property in which an official holds a leasehold interest is presumed to be material.  
12 This presumption may be rebutted by proof that it is not reasonably foreseeable that the  
13 governmental decision will have any effect on any of the following:

14 (A) The termination date of the lease;

15 (B) The amount of rent paid by the lessee for the leased real property, either positively  
16 or negatively;

17 (C) The value of the lessee's right to sublease the real property, either positively or  
18 negatively;

19 (D) The legally allowable use or the current use of the real property by the lessee; or

20 (E) The use or enjoyment of the leased real property by the lessee.

21 (b) Indirectly involved real property interests.

22 (1) Real property, other than leaseholds. The financial effect of a governmental  
23 decision on real property which is indirectly involved in the governmental decision is  
24 presumed not to be material. This presumption may be rebutted by proof that there are  
25 specific circumstances regarding the governmental decision, its financial effect, and the

1 nature of the real property in which the public official has an economic interest, which  
2 make it reasonably foreseeable that the decision will have a material financial effect on  
3 the real property in which the public official has an interest.

4 (A) Examples of specific circumstances that will be considered include, but are not  
5 limited to, circumstances where the decision affects:

6 (A) (i) The development potential or income producing potential of the real property  
7 in which the official has an economic interest;

8 (B) (ii) The use of the real property in which the official has an economic interest;

9 (C) (iii) The character of the neighborhood including, but not limited to, substantial  
10 effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar  
11 traits of the neighborhood. {Dec 1} With respect to general plan decisions described in 2  
12 Cal. Code Regs. section 18704.2(b)(3), the existence of the circumstances described in  
13 this subdivision (b)(1)(A)(iii) will not alone rebut the presumption of subdivision (b)(1).

14 (2) Real property, leaseholds. The financial effect of a governmental decision on real  
15 property in which a public official has a leasehold interest and which is indirectly  
16 involved in the governmental decision is presumed not to be material. This presumption  
17 may be rebutted by proof that there are specific circumstances regarding the  
18 governmental decision, its financial effect, and the nature of the real property in which  
19 the public official has an economic interest, which make it reasonably foreseeable that the  
20 governmental decision will:

21 (A) Change the legally allowable use of the leased real property, and the lessee has a  
22 right to sublease the real property;

23 (B) Change the lessee's actual use of the real property;

- 1       (C) Substantially enhance or significantly decrease the lessee's use or enjoyment of
- 2       the leased real property;
- 3       (D) Increase or decrease the amount of rent for the leased real property by 5+percent
- 4       during any 12-month period following the decision; or
- 5       (E) Result in a change in the termination date of the lease.

1                                    **STEP 6 - REASONABLE FORESEEABILITY**

2    **Add**

3    **18706.1. Determining Whether a Material Financial Effect Is Reasonably**  
4    **Foreseeable; General Plan Decisions.**

5  
6            (a) If a governmental decision of a public official's agency is one to adopt or  
7    amend a general plan as specified in subdivision (b) of this regulation, it is not reasonably  
8    foreseeable that such decision will have a material financial effect upon that public  
9    official's economic interests.

10           (b) All of the requirements below must be met:

11           (1) The governmental decision to adopt or amend a general plan only identifies  
12    planning objectives or is otherwise exclusively one of policy;

13           (2) The governmental decision to adopt or amend a general plan requires further  
14    decisions by the public official's agency prior to the undertaking of a particular activity.  
15    Examples of such further decisions include, but are not limited to, rezoning, a zoning  
16    variance, or adoption or change to a land use ordinance;

17           (3) The adoption or amendment does not concern an identifiable parcel or  
18    development project, or the agency's prior, concurrent or subsequent approval of a  
19    specific plan; and

20           (4) The governmental decision to adopt or amend a general plan does not include  
21    a decision in a matter initiated by, or on behalf of, the public official or any person which  
22    is an economic interest to the public official.

23           (c) Definitions:

24           (1) For purposes of this regulation, a governmental decision to "adopt" a general  
25    plan is one that, in the manner described in Government Code § 65301, grants initial



1 approval to, substitutes for, or replaces a general plan in its entirety, or grants initial  
2 approval to any component of a general plan, including elements, a statement of  
3 development policies, and diagrams and texts setting forth objectives, principles,  
4 standards, and plan proposals, as described in Government Code §§ 65302 and 65303.

5 (2) For purposes of this regulation, a governmental decision to “amend” a  
6 general plan is one that substitutes or replaces in part, adds to, takes away from, or  
7 otherwise modifies an existing general plan, general plan element, or other component of  
8 a general plan, including elements, a statement of development policies, and diagrams  
9 and texts setting forth objectives, principles, standards, and plan proposals, as described  
10 in Government Code §§ 65302 and 65303.

11  
12 NOTE: Authority cited: Section 83112, Government Code.  
13 Reference: Section 87100, Government Code.